

This is an amendment to 16.19.4 NMAC, Sections 3, 8 and 11, effective 11/30/2021.

Explanatory Paragraph: This is an amendment to 16.19.4 NMAC, Sections 3, 8 and 11, effective 11/30/2021. Subsection A, B, C, E and F of Section 11 were not published as there were no changes.

16.19.4.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Those provisions include the authority to:

- A.** deny or take disciplinary action with respect to any certificate of registration or license held or applied for under the Pharmacy Act, Section 61-11-20 NMSA 1978;
 - B.** require and establish criteria for continuing education as a condition of renewal of a pharmacist license, Paragraph (4) of Subsection A of Section 61-11-6 NMSA 1978;
 - C.** issue permits or licenses, as defined and limited by board regulation, to nursing homes, industrial and public health clinics and home care services, Paragraph (6) of Subsection A of Section 61-11-6 and 61-11-14 NMSA 1978;
 - D.** provide for the issuance and renewal of licenses for pharmacists, Paragraph (3) of Subsection A of Section 61-11-6, and 61-11-13 NMSA 1978;
 - E.** provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline, Paragraph (5) of Subsection A of Section 61-11-6 NMSA 1978; and
 - F.** adopt rules and regulations that establish patient counseling requirements, Paragraph (18) of Subsection A of 61-11-6 NMSA 1978. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. The Impaired Pharmacists Act, Sections 61-11A-1 to 61-11A-8 NMSA 1978, requires the establishment by the board of a plan for treatment and rehabilitation of impaired pharmacists. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board of pharmacy to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board of pharmacy from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board of pharmacy the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.
- [3/14/1998; 16.19.4.3 NMAC - Rn, 16 NMAC 19.4.3, 3/30/2002; A, 9/14/2021; A, 11/30/2021]

16.19.4.8 DEFINING GROSS IMMORALITY: Gross immorality shall constitute a felony conviction of a crime involving ~~[moral turpitude including, but not limited to, rape, murder, fraud, theft, embezzlement or bribery.]~~ a disqualifying criminal conviction. "Conviction" means either a plea of guilty or nolo contendere, or any other full adjudication on the merits by a court of competent jurisdiction, including but not limited to a trial. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence.

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may result in license suspension, or disqualify a licensee or applicant from receiving or retaining a license issued by the board:

- (1) Section 30-2-1 NMSA 1978 "Murder";
- (2) Sections 30-9-1 and 30-9-11 to 30-9-13 NMSA 1978, Criminal sexual offenses, including of a minor and enticement of a child;
- (3) Sections 30-37-2 to 30-37-3.3 NMSA 1978, Sexually oriented material harmful to minors, including child solicitation by electronic communication device and criminal sexual communication with a child;
- (4) Sections 30-6A-3 to 30-6A-4 NMSA 1978, Sexual exploitation of children, including prostitution;
- (5) Section 30-16-2 NMSA 1978 "Robbery";
- (6) Section 30-16-6 NMSA 1978 "Fraud";

- (7) Section 30-16-8 NMSA 1978 "Embezzlement";
- (8) Section 30-16-9 NMSA 1978 "Extortion";
- (9) Section 30-16-10 NMSA 1978 "Forgery";
- (10) Section 30-16-11 NMSA 1978 "Receiving stolen property";
- (11) Section 30-16-24.1 NMSA 1978 "Theft of identity; obtaining identity by electronic fraud";
- (12) Section 30-16-30 NMSA 1978 "Dealing in credit cards of another";
- (13) Section 30-16-31 NMSA 1978 "Forgery of a credit card";
- (14) Section 30-16-33 NMSA 1978 "Fraudulent use of a credit card";
- (15) Section 30-28-3 NMSA 1978 "Criminal solicitation";
- (16) Section 30-42-4 NMSA 1978 "Engaging in a pattern of racketeering activity";
- (17) Sections 30-44-4 to 30-44-7 NMSA 1978, Offenses related to Medicaid Fraud;
- (18) Sections 30-47-4 to 30-47-6 NMSA 1978, Abuse or neglect of a care facility resident, exploitation of a care facility resident's property;
- (19) Section 30-51-4 NMSA 1978 "Money laundering";
- (20) Section 30-52-1 NMSA 1978 "Human trafficking";
- (21) Section 24-26-12 NMSA 1978 "Intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act" (Sections 24-26-1 to 24-26-12 NMSA 1978);
- (22) Section 27-5-12 NMSA 1978 Making false statement in claim for payment under Indigent Hospital and County Health Care Act (Chapter 27, Article 5 NMSA 1978);
- (23) Section 66-8-102 NMSA 1978 "Fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs";

B. Unless otherwise specified by law, the board shall not consider a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this Section 16.19.4.8 NMAC. Any decision by the Board to take action against an applicant or licensee on the basis of a disqualifying criminal conviction shall occur in conformance with the Uniform Licensing Act.

C. Nothing in this section prevents the board from denying an application or disciplining a licensee on the basis of the licensee or applicant's conduct to the extent that such conduct violated the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 NMSA 1978), regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule. Proceedings shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

D. Notwithstanding Subsection C of this Section, in connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this section.

[3/1/1993; 16.19.4.8 NMAC - Rn, 16 NMAC 19.4.8, 3/30/2002; A, 11/30/2021]

16.19.4.11 CONSULTANT PHARMACIST:

D. Consultant pharmacists serving custodial care facilities:

(1) Custodial care facility as used in this regulation includes: Any facility which provides care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs.

(2) Any facility which meets the requirements outlined in Paragraph (1) of Subsection D of 16.19.4.11 NMAC shall be licensed by the board of pharmacy, engage a consultant pharmacist, whose duties and responsibilities are indicated in ~~Paragraph (3) of Subsection D of~~ 16.19.4 and [16.19.8.11] 16.19.11 NMAC.

(3) Procurement of drugs or medications for residents will be on the prescription order of a licensed physician - written or by oral communication, which order shall be reduced to writing by the pharmacist as required by law. Refills shall be as authorized by the physician. When refill authorization is indicated on the original prescription, a refill for a resident may be requested by the administrator of the licensed facility or his designee by telephone to the consultant pharmacist, or the providing pharmacy.

(4) The administrator or a designated employee of the facility will sign a receipt for prescription drugs upon delivery.

(5) All prescription drugs will be stored in a locked cabinet or room and the key will be assigned to a designated employee or the administrator as indicated in the procedures manual.

(6) Proper storage as stipulated in the official compendium USP/NF will be the responsibility of the licensed facility.

(7) Records - the consultant pharmacist shall be responsible for the following records:

(a) incoming medications - including refills;

(b) record of administration;

(c) waste or loss; This accountability record shall be maintained on a patient log, on forms provided to the consultant pharmacist by the board of pharmacy.

(8) All prescription containers shall be properly labeled as required in 16.19.11 NMAC. No bulk containers of legend drugs will be kept on the premises, except in a facility with a 24-hour per day and 365 day per year on-site licensed nurse. Only the following stock dangerous drugs may be kept:

(a) tuberculin testing solution; and

(b) vaccines as recommended by the centers for disease control (CDC) and prevention's advisory committee on immunization practices and appropriate for the facility population served; and

(c) naloxone for opioid overdose.

(9) Consultant pharmacist shall include in the procedures manual the name of individual(s) responsible for the assistance with the medication.

(10) It shall be the responsibility of the pharmacist to give proper training/instruction to the person(s) at the facility who have day-to-day responsibility for receipt and administration of medications to resident when adverse reactions, special diet, or any other information relative to the administration of a drug is needed by the staff.

(11) The consultant pharmacist shall be required to maintain a patient profile on each individual, if applicable to the facility and individual.

(12) The consultant pharmacist shall visit the facility no less than once a quarter or more often, commensurate with patient drug regimen and shall be available in emergencies, when needed. A log shall be maintained indicating all visits to the facility and noting any activities or irregularities to be recorded or reported. This log shall be available for state drug inspectors' review upon request.

(13) The consultant shall be responsible for the preparation of a procedures manual outlining procedures for the receipt, storage, record keeping, maintenance of patient profiles, administration and accountability of all legend drugs and procedures for the removal and destruction of unwanted, unused, outdated or recalled drugs - controlled substances shall be handled pursuant to state and federal regulations.

[8/27/1990; 16.19.4.11 NMAC - Rn, 16 NMAC 19.4.11, 3/30/2002; A, 6/30/2006; A, 10/24/2014; A, 12/13/2015; A, 11/30/2021]